FARMERS' BULLETIN 1164

THE FARM LEASE CONTRACT

Rev. ed. follows

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UNITED STATES
DEPARTMENT OF AGRICULTURE

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YOUR FARM LEASE—

WAS ITS FULL MEANING understood before it was signed?

Is it so written that its meaning will be clear at any later time?

Is it fair to both parties?

Does it give the tenant a reasonable opportunity to make a comfortable living and to get ahead?

Does it require proper and conservative care of the premises leased?

Are all desired reservations to the lease made?

Are the things stated which each party is to do and to contribute?

Does it make clear the rights and privileges of each party?

Does it define the relationship between landlord and tenant and provide for the settlement of differences of opinions?

Does it contain a statement of the procedure to be followed when the relationship of landlord and tenant is to be terminated?

Does it contain the following essentials to a legally complete lease?

1. The date it was made.
2. The names and the final signatures of the contracting parties.
3. The period for which the lease is to run.
4. A description of the property leased.
5. An agreement in respect to the amount of rent to be paid and the time when and the place where it is to be paid.

Washington, D. C.

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IMPORTANCE OF CONTRACT.

THE IMPORTANCE of the subject of this bulletin is indicated by the fact that 42.1 per cent of all farms in the United States were operated by tenants in 1935, while 10.1 per cent were operated by owners renting additional land. Part or all of the land and improvements of about 3,500,000 farms was rented. Since the great majority of lease contracts are for one year, and since the average period which the tenant remains on a farm is about three years, it is probable that each year about 2,000,000 lease contracts must be made or renewed.

Some students of the land question believe that even in an ideal system of land tenure a considerable proportion of tenancy would be desirable provided that the relationship of landlord and tenant were such as would insure good farming, the conservation of the soil, a fair division of the product, and a progressive community life of which the tenant is an essential part.

It is too much to expect that such a desirable relationship can be established merely by improvement of the lease contract, but it must be admitted that since the lease agreement is the basis of the relationship between landowner and tenant, a careful consideration of its terms may have much to do with promoting harmony and mutual satisfaction, lengthening the period of occupancy, and improving the methods of farming rented land.

Throughout the United States the terms of lease contracts vary so much in accordance with differences in type of farming and other local conditions that it is impossible in a single bulletin to furnish

detailed instructions that will apply to all these varied conditions. The discussion of the leasing system suitable for a given type of farming—such as dairy farming, grain farming, cotton farming, or fruit farming—will require an entire bulletin.

However, there are many considerations common to all leases, no matter what the type of farming. The object of the present bulletin is to discuss some of these common considerations and particularly to provide a list of points that may need to be considered in the making of a satisfactory lease contract. It has been the experience of many farmers that in the making of such a contract one is likely to overlook or omit some essential points unless he has available memoranda to remind him of all the matters that should be considered.

THE PRINCIPAL KINDS OF LEASE CONTRACTS.

The majority of farm leases fall into a few main classes according to the method of rent payment, namely, cash, share, share-cash, and stock share.

In cash renting the landlord furnishes only the real estate, usually paying taxes and at least the money costs of upkeep. The tenant furnishes working capital, bears all operating expenses, and receives all the income after paying a fixed amount of cash as rent. The landlord does not assume any of the risks of farm operation, and usually undertakes no responsibility for management except such supervision as may be necessary to see that the land and improvements are not abused. Obviously the system may prove advantageous to a landlord who, for any reason, can not give much attention to the business of farming, and it may be preferred by the tenant who has sufficient capital and experience to operate without assistance from the landlord and who does not wish to share the profits of superior management with another.

Standing rent—sometimes called "lint rent"—is a modified form of cash rent. The tenant agrees to pay so many bushels of grain or so many bales of ginned cotton for the use of the farm. The landlord gets the same amount no matter how large or how small the crop. Consequently he is freed from the risk of loss due to bad seasons or bad management and, therefore, from the necessity of assuming responsibility for the management of the farm. Unlike true cash rent, however, the actual rent received by the landlord in the system of standing rent is subject to variation due to changes in the prices of the products received as rent.

In share renting the landlord receives a share or fraction of all or of certain crops and sometimes also of live-stock products and increase of live stock. More generally than in renting for cash or

for a standing rent, he also pays some of the expenses of production. There are numerous variations in different parts of the country and with different types of farming with regard to the contributions and receipts of the respective parties. Because of the greater complexity of the share-renting contract and also because the system of share renting is more generally employed in the United States than any other system of renting more attention is devoted to it in this bulletin than to other forms of renting.

One of the chief reasons for the popularity of the share-rent system among landlords is the greater control which this system gives them over their farms, as compared with the cash-rent system. Another reason is that the landlord stands to realize every year a rental which is directly proportionate to the production and prices of the year. His profit being proportionate to the success with which the farm is worked, it behooves him to give more freely of his experience and capital toward its improvement and proper management than he would do if the place were worked by a cash tenant. Tenants who have little capital and experience can often do no better while acquiring these advantages than to take a farm on shares from an experienced landlord who is prepared to supply a part of the working capital, to exercise a considerable amount of supervision, and to share the risks of the business. On the other hand, if the farm is unusually small or infertile, the tenant may find it unprofitable to rent at the customary share and decline to work the place except on a cash-rent basis.

Stock share renting is a form of share renting in which the landlord and tenant share the ownership of all or part of the productive live stock, usually half-and-half, sharing the expenses and receipts in the same proportion. The general advantages and disadvantages of the system for each party are somewhat similar to those in ordinary share renting. Stock share renting fosters general live-stock farming and encourages the utilization on the farm of feedable grains and other crops. It usually results in a close association of the landlord with the business and often approximates the character of a business partnership.

Another modified form of share renting is the share cash system. Usually this consists of sharing the more important crops, but the tenant pays cash rent for pasture or occasionally for buildings, use of garden, or other special advantages. Usually the system is superior to the share system proper in that the landlord, because of the cash rent feature, is more willing that the tenant should increase the acreage in pasture and consequently engage in live-stock farming to a greater extent than would be the case if the landlord received

only a share of the crops and nothing for use of pasture. In some cases the cash rent, or a part of it, is in the nature of a bonus paid in addition to the usual share rent.

A form of share renting commonly known as "cropping" or the "cropper system" in cotton and tobacco producing regions, superficially resembles the system of share renting already described in that the cropper pays the landlord a share of the crop. However, the cropper usually contributes nothing but human labor to the enterprise, and under the laws of a number of States is considered a laborer rather than a tenant. The majority of croppers are subject to supervision by the landlord and are dependent on him not only for the capital needed for putting in the crop, but also for living expenses while the crop is being produced.

Because the landlord assumes a greater amount of the risk, and usually a greater amount of responsibility for supervision under the various forms of share leasing, he should receive a somewhat larger net return per acre than under cash leases. Belief that this is the case has been confirmed by most of the farm income surveys that have been made.

POINTS TO BE CONSIDERED IN THE FARM LEASE.

The following is a list of points that may need to be considered in the making of the farm lease. While it does not cover all possible points, it does contain the more common and the more important considerations. Since cash renting is much simpler than renting on shares, there are many points in the list which do not apply to cash leases.

I.

GENERAL DETAILS.

1. Date lease is made.
2. Names and formal designations of landlord and tenant.
3. Number of years lease is to run and dates of beginning and ending.
4. Statement of manner by which the lease is to be terminated or renewed.
5. Brief description of the real estate leased, including name of farm, boundaries, and location with respect to State, county, township, and section.
6. Description of other property included with the real estate in the lease.

II.

RESERVATIONS.

1. Right of entry by the landlord for purpose of inspecting buildings and other improvements, crops, and live stock, for making repairs and improvements, for work in connection with crops of the following harvest and for other purposes.

2. Reservation by the landlord of parts of buildings, granary space, corn cribs, mow space, and any other portion of the real estate the use of which it is agreed he shall reserve.

3. Reservations and restrictions with respect to the use of pasture, fruit, woods, timber, sand pits, gravel beds, fish, and game.

4. Reservation of the right to decide or direct farming operations.

5. Reservation of the right to buy or sell live stock, crops, produce, or supplies for farm use.

6. Limitations on the kind, amount, or value of property which may be bought or sold without informing the landlord and getting his consent.

7. Designation of a bank in which undivided funds are to be kept or deposited, with agreement as to the disposition or use of these funds.

8. On share rented farms, a statement denying, acknowledging, or limiting partnership relation.

9. Reservation of the right to sell the farm, with statement of adjustments to be made in case of sale.

III.

ASSURANCES AND GUARANTIES BY THE TENANT.

1. To operate the farm in a good and farmerlike manner.

2. Not to sublet the farm.

3. To occupy the farm continuously throughout the lease period.

4. Not to attempt to operate outside land in addition; not to thrash for outsiders as a business nor to give preference to any other work over the operation of the farm.

5. To work for the landlord if requested, at specified rates, when not engaged in work on the farm.

6. To commit no waste or damage, and suffer none to be committed; to protect and care for the buildings, fences, trees, and other property.

7. To make inventories at stated periods and to keep records of farm yields, acreage, purchases, sales, breeding of live stock, and to give the landlord access to these records.

8. To yield peaceable possession at the termination of the lease.

9. Not to bring on the premises mortgaged property that may have the effect of impairing the landlord's lien.

IV.

ASSURANCES AND GUARANTIES BY THE LANDLORD.

1. To make concessions with respect to rent and other obligations of the tenant in the event of disaster to the farm operations as the result of fire, flood, drought, pestilence, or other conditions over which the tenant has no control.

2. To provide peaceable possession, or to protect the tenant's interests, in event of litigation or seizure of the landlord's title by a mortgagee or other claimant.

3. To release to the tenant the residue of crops, live stock, and other products remaining after the rent or rent share is paid and the landlord's lien satisfied.

V.

AGREEMENTS WITH RESPECT TO CREDIT FURNISHED BY THE LANDLORD.

1. Terms on which the landlord is to make advances of money or supplies to the tenant for the purpose of operating the farm.

2. Special and occasional credits to make possible the purchase of live stock and feed, or with respect to the feeding of crops to live stock.

3. Terms of loans on farm implements, work stock, productive stock, or other property of which the tenant is to be the nominal owner or part owner.

VI.

RESPECTIVE CONTRIBUTIONS BY EACH PARTY TO OPERATING CAPITAL.

1. General farming machinery, running gear, small tools, and harness, with provision for replacement and repair.

2. Special farm machinery not commonly employed, such as manure spreader, lime or fertilizer distributer, spraying outfit, silage cutter and engine, milking machine, gasoline engine, thrashing machine, tractor and tractor equipment, with provision for replacement and repair.

3. Horses and other work stock.

4. Productive live stock, including cattle, hogs, sheep, and poultry.

VII.

ADJUSTMENTS WITH RESPECT TO PROPERTY OWNED IN JOINT ACCOUNT.

1. Method of appraising the value of property of either party taken over for joint account.

2. Method of dividing property jointly owned at termination of lease.

3. Settlement for undivided crops, products, or supplies used by the tenant in his household, for his horses or other stock.

VIII.

RESPECTIVE CONTRIBUTIONS BY EACH PARTY TO EXPENSES.

1. CONTRIBUTIONS OF LABOR AND SPECIAL SERVICES:

(*a*) Amount of labor to be contributed by each party to general farm work.

(*b*) Special arrangements with respect to the employment of members of the tenant's family.

(*c*) Arrangements with respect to extra hired labor and labor engaged in thrashing, silo filling, baling, shredding, clover hulling, and other operations involving the employment of machines not owned by the tenant.

(*d*) Responsibility of the respective parties with regard to hauling and delivery of crops, milk, and other farm products, hauling supplies for farm use, hauling tile, sand, lumber, fencing, and other materials used in making farm improvements.

(*e*) Furnishing of skilled labor or unskilled labor employed in fencing, tiling, repair or construction of buildings, drilling of wells, or other work of farm improvement.

(*f*) Contribution of labor employed in mowing, grubbing or pulling weeds and brush, cleaning ditches and drainage outlets.

(*g*) Contribution of labor employed in keeping up fences and in incidental patching and repairs to improvements.

(*h*) Arrangements for the board and lodging of outside labor, particularly of labor employed by the landlord on farm improvements.

2. EXPENSES ON ACCOUNT OF LIVE STOCK:

(*a*) Use of feed purchased or produced on the farm. What stock may be fed from undivided feed and what stock may not be so fed. Limitations on the amount of undivided feed which may be used for different classes of stock or on the number of stock which may be fed.

(*b*) Breeding and veterinary fees; cow testing, registration, and exhibition fees; live-stock insurance; horseshoeing and other incidental expenses in connection with productive live stock or work stock.

(*c*) Sharing of losses from injury, depreciation, or death of live stock.

3. OTHER EXPENSES:

(*a*) For seed, including grass, clover, alfalfa, and cover crops, general farm crops and plants used in the raising of truck crops, small fruits, and tobacco.

(*b*) For setting out or caring for fruit and ornamental trees and hedges.

(*c*) For barrels, boxes, crates, bags, bagging, baskets, cans, and other containers.

(*d*) Manure, lime, phosphates, and other fertilizers.

(*e*) Spray material for field crops and fruit trees, material for treatment of seed and inoculation of soil for legumes.

(*f*) Machine bills for thrashing, ginning, shredding, baling, silo filling, clover hulling, and corn shelling.

(*g*) For coal, gasoline, and oil for farm use, binder twine.

(*h*) For telephone.

(*i*) Storage, freight, buying, and marketing costs.

(*j*) Insurance on farm crops, feed, supplies, and implements.

(*k*) Taxes on property other than real estate, water assessments, and irrigation ditch upkeep.

(*l*) Real estate insurance and taxes, including school and road taxes.

(*m*) Expenses for hiring additional pasture and other land outside of the regular farm area.

IX.

PAYMENT OF RENT.

1. Cash rent for entire farm or portions thereof, with specifications as to amount, time, and place payable.

2. Rent payable in terms of a fixed quantity of a farm product, with specifications as to amount, quality, time, and place payable.

3. Rent share of the various farm products with specifications concerning time, place, method of division, and responsibility of tenant for delivery.

4. Specified quantities of milk, butter, eggs, firewood, feed, fruit, and other products for landlord's household use, and arrangements with respect to delivery of the same.

X.

PRIVILEGES FOR WHICH SPECIAL RENT IS OR IS NOT TO BE PAID.

1. The farmhouse, habitation for laborers, and buildings for live stock, tools, and crops harvested.

2. Garden spot and pasturage.

3. Use of small areas of land for raising special forage crops.

4. Use of fruit, firewood, milk, eggs, butter, and other products for tenant's household, or for laborers.

5. Use of undivided grain, hay, or other crops for live stock kept by the tenant for his personal advantage.

XI.

SPECIFICATIONS WITH RESPECT TO THE CARE, USE, AND IMPROVEMENT OF REAL ESTATE AND ARRANGEMENT FOR LABOR AND MATERIALS USED OR NEEDED FOR THESE PURPOSES.

1. Fruit, shade trees, forest trees, and down timber.

2. Drains, ditches, bridges, and roads.

3. Time, frequency, and manner of mowing weeds and brush in pasture, along roads and fence rows, and about buildings.
4. Windmill, engine, and pumps.
5. Buildings, fences, and gates.

XII.

SPECIFICATIONS WITH RESPECT TO FARMING METHOD AND PROCEDURE.

1. Specifications as to acreage, location, and rotation of various crops.
2. Enumeration of crops which may not be raised.
3. Special regulations with respect to the method of growing each crop, including the details with respect to preparation of the land, time and manner of planting, kind of seed, method of manuring or fertilization, subsequent care, harvesting, storage, and marketing, or time and manner of division.
4. Limitations or restrictions on the sale or removal of crops, on the pasturage of crops, and on the burning or removal of straw, fodder, manure, etc.
5. Number and kind of live stock to be kept and the upper and lower limits of the same.
6. Regulations with regard to the number of stock which shall be allowed to run on pasture and times when pastures may or may not be used.
7. Provision for the ringing of hogs and prohibition of the keeping of breachy live stock.

Specifications respecting the methods of farming and the procedure to be followed may be made clearer if, in making them a part of the lease, they are accompanied by a map of the farm. Such a map may show such details as the use made of the land in past years, previous rotation system, present use of the land, rotation to be followed in the future, the drainage system, past and present policies with respect to clearing, liming, manuring, and fertilizing.

XIII.

PROVISION FOR SUPERVISION.

1. Provision with respect to kind and extent of supervision for which each party will be responsible.

XIV.

PROCEDURE AT TERMINATION OF LEASE.

1. Disposition of crops growing, unfed or unsold, or of feed and supplies remaining on hand.
2. Disposition of farming equipment, work animals, and other live stock owned on joint account.
3. Specification of number of acres which must be left plowed, seeded down, planted in wheat or other crops, or in pasture.
4. Compensation for improvements made by the tenant, including construction of buildings and fences, digging of wells, drainage work, clearing of land, setting out trees and small fruits, planting of hops, asparagus, rhubarb, or other perennial plants.
5. Compensation for unexhausted additions made by the tenant to the fertility of the soil.
6. Authority for removal of improvements made by the tenant without assistance or compensation by the landlord, such as fences, hog houses, corn cribs, water troughs.
7. Settlement of outstanding indebtedness.

XV.

ENFORCEMENT OF CONTRACT.

1. Provision for the settlement of disputes and differences of opinion by arbitration or otherwise.
2. Provision for fulfillment of terms of the contract by heirs, executors, administrators, or assigns, in the event of death or disability of one or both parties.
3. Conditions that will constitute a forfeiture of the lease, and method of determining rights of landlord and of tenant in the event of termination by forfeiture.
4. Provision for penalty to be paid by either party according to a stated scale in the event of failure to perform certain agreements in the contract.
5. Right of the owner to have work which is neglected by the tenant performed at the tenant's expense.
6. Acknowledgment of the existence of a lien to secure to the landlord the payment of the rent and the performance of specified agreements.

XVI.

FINAL DETAILS.

1. Signatures of the parties and their witnesses.
2. Sealing and recording.

DISCUSSION OF PROBLEMS COMMON TO ALL KINDS OF FARM LEASES.

FORM OF THE LEASE.

A written lease is more satisfactory than a verbal one. If one of the parties should die, a written contract protects his estate from false claims by the other party. A written lease is likely to be more carefully considered by both parties, and its terms defined with greater precision. Moreover, it serves as a memorandum to both parties, so that the actual terms of the contract may not easily be forgotten. In practically all of the States the statutes provide that a lease for a period longer than that specified by statute (commonly three years) shall be considered as creating only an estate at will, unless the contract is in writing and unless it complies with the requirements specified with regard to signatures, witnesses, or other formalities.

Standard printed forms for farm lease contracts may often be obtained from printing establishments, stationers, lawyers' offices, and banks. Such forms usually contain insufficient space for the numerous special conditions of a complicated farm lease. However, a standard lease form may be of assistance in providing legal terminology and such legal specifications as may be peculiar to the law of the State. It is desirable that the landlord and tenant agree on the terms of the contract and then prepare a lease embodying these agreements. After the terms of the lease are agreed upon an at-

torney may be consulted, if desired, to aid in giving the correct legal form.[1]

The legal essentials to the validity of a lease contract are definite agreements as to (*a*) the extent and bounds of the property leased; (*b*) the term of the lease; (*c*) rate of rent, together with specifications of time and method of payment. It is not usually necessary that a lease contract be recorded in order to be valid, but recording may have the advantage of serving notice to third parties of the existence of the contract. However, in probably a majority of the States the physical possession of the property by the tenant is held to constitute notice to third parties of his rights in the property.

DESIGNATION OF PARTIES.

In framing any legal contract it is important to designate accurately the respective parties. It is customary to use the terms "party of the first part" and "party of the second part" to designate the respective parties. If one of the parties comprises more than one person, the expression should be plural—as, for instance, "parties of the second part." In order to shorten and simplify the contract it may be well to define the meaning of these expressions at the beginning of the lease. Such a definition may read as follows:

> This agreement, made this first day of March, 193—, between John Smith, party of the first part, hereafter called "the landlord," and Richard Brown, party of the second part, hereafter called "the tenant," witnesseth, etc.

LENGTH OF LEASE PERIOD.

One of the most important questions to be determined is the proper length of the lease period. In the United States farm leases have been predominantly of short duration, the majority for one year. In England there were many experiments during the early part of the nineteenth century with leases of from seven to twenty-one years in length, and Scotland continues to be a country of long leases. However, it has become customary in the latter country to modify the long lease by provisions for terminating the lease at certain definite times during the period of the lease by giving sufficient notice, as, for instance, at the end of the second, fourth, or sixth year. In England long leases have generally given place to the one-year lease with guaranty of compensation for improvements in accordance with the provisions of the agricultural holdings acts.

These extensive experiences have shown clearly the advantages and disadvantages respectively of long and short leases. In the case of long leases for cash rent the actual cash rental value of the land may become out of line with the rent specified in the lease on account of

[1] In the following discussions forms of statement for various kinds of clauses are included. However, these are for illustration and it is not advised that they be rigidly followed.

changes in prices and other conditions. Such objection to long-term leases is overcome in part, if not entirely, when the rent is a share or a fixed amount of the crop. The landlord may be prevented from taking advantage of favorable opportunities to sell the land unless the lease contains a clause permitting sale. Such a clause, however, tends to nullify the long-term character of the lease unless accompanied by provisions for compensating the tenant substantially for termination by sale. Experience in England showed that tenants often found it to their personal advantage to use the land to its detriment in the last years of a long lease, and it was necessary to introduce clauses carefully restricting the method of farming in the last years of the contract. Still another objection to the long lease is that while it is binding on the landlord, it may have but slight binding effect on the tenant who has little property.

The long lease enables the tenant to undertake extensive improvements such as liming or tiling, and to engage in systems of rotation covering a considerable period of years, without fearing that the fruits of his labor will be lost through the termination of the lease. However, this advantage may be obtained under the short lease when the lease contains provisions for compensating the tenant for unexhausted improvements made by him.

The short lease has great advantages for both parties because of its elasticity. We live in a country of rapid changes, and it is doubtful if any considerable number either of landlords or of tenants would care to be bound by lease contracts of long duration. Moreover, short leases do not necessarily imply short tenures. Such statistics as are now available appear to indicate that in the United States tenants under one-year leases have occupied the farms leased for a greater number of years than those whose leases were for longer periods.

In fact, there is even greater reason in the United States than in England for short tenures. Land in America changes owners much more frequently than land in England does. In England many landlords have only a life estate in the land and not the right to sell. England is predominantly a land of cash renting, while in the United States more than twice as many farms are rented on shares as for cash. Since the amount of the landlord's share depends largely on the efficiency of the tenant the former is not likely to want to enter into a contract for a long period until he is sure of the tenant's efficiency. Moreover, because of the comparatively intimate relationship that usually exists between landlord and tenant in share farming, the success of the enterprise depends to a large extent on the personalities of the two parties and on their ability to work together harmoniously. Many of the young tenants are compelled at first to rent inferior farms, and desire to retain them only until they can obtain better ones.

For these reasons it is probably wise to start with a one-year lease, but with a clause providing for renewal. Such a clause for a lease terminating March 1 may read as follows:

> The second parties shall have the privilege of notifying the first parties in writing on or before the first day of September, 193—, that they have elected to renew this lease for the second year, and such election shall be binding upon the first parties unless they notify the second parties in writing on or before October 1, 193—, that they do not desire a renewal of this lease on their part. If the lease is renewed, the same right of election shall apply to the year 193—.

After the two parties have become thoroughly acquainted and it has become clear that they can work together harmoniously and effectively, it may be desirable to enter into a lease contract of sufficient length to enable the tenant to engage in systematic farm improvement involving the investment of capital and labor for which an immediate return will not be forthcoming. Some of the disadvantages of the lease for a period longer than one year may be overcome by clauses providing penalties for nonfulfillment of contract and for annulment of contract in extreme cases. (See pp. 16, 23.) Likewise it may be provided that either party may dissolve the arrangement by paying compensation to the other party to an amount specified in the lease. This enables either party to escape from fulfilling the complete period of the lease if emergency makes it desirable. Such a dissolution, however, should not be permissible except at the end of the farm year, nor should it be permissible except on the fulfillment of those contract provisions which would have to be fulfilled at the termination of the regular period of the lease, such as compensation for unexhausted improvements made by tenant and for unharvested crops.

Whether the lease should be for one year or for a longer period is likely to be determined in part by circumstances. Thus, when the landlord furnishes all the operating capital, makes all the improvements at his own expense and provides for the maintenance of fertility, there may be little reason for a lease running longer than one year. On the other hand, when the contract calls for the clearing of land by the tenant in return for the free use of it or for use at a nominal rent, a lease of at least five or six years may be necessary. Similarly, when the tenant is expected to plant a considerable acreage in fruit or in perennial crops, a term of several years may be desirable. In fact, any lease contract which requires a considerable investment of irremovable capital on the part of the tenant may necessitate either a lease of considerable duration or agreements for compensation at termination for unexhausted improvements made by the tenant. It should not be assumed, however, that either a long lease or provision of compensation for unexhausted improvements will alone induce good farming. While the absence of both arrangements may tend to

discourage an efficient tenant from pursuing sound methods of agriculture, other provisions in the lease may be necessary to compel the inefficient and improvident tenant to employ such methods. Where such is the case specific requirements concerning the system of farming should be accompanied by stipulations permitting careful supervision on the part of the landlord.

DATE OF BEGINNING.

The date of beginning the lease year differs in various sections of the country, but is usually made to coincide with the time of year when the more important crops have been harvested and sold and before preparations for crops of the following harvest begin. In the Corn Belt, March 1 is the customary date; in the South, January 1; in regions where winter wheat is the principal crop, August 1.

DISAVOWAL OF PARTNERSHIP RELATION.

The relationship of landlord and tenant is not ordinarily that of a partnership. The latter involves joint liability to an unlimited extent for all debts created by either party in the name of the firm, equal voice in the management of the business, and other conditions not characteristic of the relation of landlord and tenant. Because the terms of many lease contracts, especially the so-called stock share leases, are of such a character as to suggest the actual relationship to be a partnership, it is sometimes customary to include a clause in the lease disavowing the partnership. It is generally held by the courts, however, that parties to an agreement can not prevent the creation of the partnership relation and its consequent bearing with respect to third parties, provided the agreement itself and the relations between the parties thereto possess the elements of a partnership. It is the facts that govern and not the name by which the parties denominate their relationship, so far as concerns the rights of third parties. However, such a clause may clarify the respective obligations of the parties to the contract with reference to one another.

A clause containing such a disavowal may read as follows:

> Said parties to this lease shall be in no sense partners. Neither shall bind the other to any obligations nor incur debts for the payment of which the other party might be liable without the written consent of that party.

CONTINUANCE OF LEASE AFTER DEATH OF EITHER PARTY.

In order to insure the continuance of the contract the following clause may be inserted:

> It is mutually agreed by and between the parties hereto that all the conditions and obligations of this contract shall extend to and be obligatory upon the heirs, successors, executors, administrators, and assigns of the tenant and upon the heirs, successors, executors, administrators, and assigns of the owner.

PROCEDURE IN EVENT OF SALE.

If a lease is but for one year, it is probably unnecessary that it contain a sale clause, but in case of a lease for several years such a clause may be inserted. The following will illustrate this type of clause:

It is hereby agreed that, in case of sale of said premises during the occupancy of said second party, and in case the purchaser should desire possession, said second party hereby agrees to give up to the said purchaser said premises at once on payment to the said second party of a fair and reasonable compensation for such surrender, and if he and the purchaser can not agree as to the amount of such compensation it shall be left to three disinterested appraisers, of whom said second party shall choose one, the purchaser one, and the two so chosen shall choose a third one. Their decision shall be final as to the amount to be paid by the purchaser to said second party.

ASSIGNMENT OF LEASE.

The assignment of a lease contract by one tenant to another is a matter of considerable concern to the landlord, for on the personal honesty and efficiency of the tenant may depend the amount of rent (in case of share contracts), the security of the rent payment, and the care of the property intrusted to the tenant. Although the assignment of a lease by a landlord is not usually a matter of great concern to a tenant, it is as well to include in the contract a clause forbidding such an assignment without the consent of both parties, as follows:

Except in case of sale, as provided above, this lease shall not be assigned or transferred to anyone unless on written consent of both parties, and no one but the party of the second part, his family, and hired help shall occupy the premises or any part thereof during the term of this contract, nor shall the premises or any part thereof be sublet without the written consent of the first party.

RIGHT OF ENTRY AND YIELDING OF PEACEABLE POSSESSION.

The landlord should reserve a right of entry, even when he does not participate in supervision of farm operations. Such a reservation may be expressed as follows:

The landlord reserves the privilege of going upon said farm at any time and at all times to look after his interests, to do work and to have work done, either personally or by agent, employee or employees, without being liable in damages.

Assurance of peaceable possession at termination of the lease may be provided for as follows:

The second party covenants and agrees with the first party that at the expiration of this lease, by limitation or otherwise, he will yield up possession of said premises in as good condition as they are at the beginning of this lease, natural wear and damage excepted, and that he expressly waives any and all notice to terminate, except as herein specifically required, and upon demand

of the first party will pay ten dollars for each day the premises are occupied after such expiration unless the written consent of the landlord for such continued occupancy shall have been given.

PROVISIONS FOR CARE OF PREMISES.

Whether the land is rented for cash or for share rent the landlord should be interested in insuring the care and preservation of his land and improvements. Nothing will serve to accomplish this result so much as careful supervision by the landlord or his representative. However, the landlord's position may be strengthened if provision is made in the contract requiring the tenant to take proper care of the property intrusted to him. Such provisions may be in general terms or detailed. If the latter, there may be great differences in the actual provisions according to the special circumstances and terms of the agreement.

The following is a general clause which provides against unnecessary waste or damage:

The party of the second part, the tenant, agrees that he will not commit or suffer to be committed any waste, damage, or strip of said premises, as, for instance, cutting wires, removing sections of fence, failing to oil pumps and windmills, or tearing down fences for purposes not required in the ordinary course of farming.

If the tenant is expected to keep buildings and fences in repair, as is generally the case, a clause such as the following may be written into the lease:

The party of the second part agrees to keep the buildings, fences, and other improvements on said premises in as good repair and condition as the same are when he takes possession, or as good as they may be put in by the lessor during the term of the lease, ordinary wear, loss by fire, or unavoidable destruction excepted.

Among the details that may be specified with respect to care of the premises, are to keep the windmill and other pumping machinery properly oiled and cared for and to repair any damage to such machinery, except when damage is due to action of the elements; to take proper care of trees, ornamental vines and shrubbery about the buildings, in the yard and garden, and to prevent injury to them; to cut all hedges at least twice each season and to burn the brush if of considerable amount; to keep open all necessary ditches; and to keep buildings and fences in good repair. Other specifications having to do with the care of the farm land will be mentioned in the discussion of farming specifications. (See p. 19.)

REPAIRS TO BUILDINGS AND OTHER FIXTURES.

Which of the two parties should be responsible for the making of repairs will depend so much on the circumstances of the case that it

is difficult to lay down a rule that always should be followed. In general it may be said that the tenant should repair all breakages and damages due to his own fault or to the special ways in which he uses the property. On the other hand, such repairs as would be necessary, even if the property were not in use, should largely be at the expense of the landlord. There will be other kinds of repairs between the two classes to which both parties should contribute.

IMPROVEMENTS.

The making of improvements, as distinguished from ordinary repairs, is supposed to add to the value of the farm, and the greater part of the expense should be defrayed by the landlord. However, if the rent is not raised as a result of such improvements the tenant will also benefit from them provided he enjoys sufficient security of tenure, in which case he may properly be expected to contribute toward the making of such improvements. The general practice is for the landlord to furnish all materials used, together with all skilled labor employed, and for the tenant to do necessary hauling of materials, to board the skilled laborers and to furnish occasional unskilled labor. If, however, the tenant is called upon to furnish any unusual amount of labor on the improvements or to furnish such labor at a time when it is needed for ordinary farm work he should be repaid for such labor at its actual cost to him. Some landlords agree with their tenants upon a wage scale to be followed in payment for special labor contributed by the tenant on the improvement of the farm. In all cases, however, the tenant's contribution should be determined by the amount of benefit he may be expected to derive as compared with benefits accruing to the landlord. Sometimes, as in the case of temporary fences constructed under a cash lease, nearly all of the benefit is to the tenant. Interior papering and decorating of the residence may largely benefit the tenant, and some landlords furnish the materials for such work if the tenant is willing to furnish the labor to do the work in a presentable manner.

INSURANCE.

It is usually the custom for the landlord to pay the expense of insuring buildings. Since fire insurance contracts may become invalid through failure of the insured party to protect the property insured against unnecessary hazards, it may be necessary for the landlord to include in the lease contract a clause such as the following:

The party of the second part covenants and agrees not to do, suffer or permit to be done any act in violation of any provisions of any policy of insurance upon any of the crops, buildings, or other property upon said premises or which shall increase the premium thereon, and that he will not sell or allow to be sold thereon or therefrom any goods at auction.

TAXES.

The landlord usually assumes the responsibility for all real estate taxes, both in cash and share leases. Occasionally, however, the tenant agrees to work out the road tax. Taxes and insurance on operating equipment, live stock, and other property are usually paid by the owner of such capital, being shared when the property is jointly owned.

DESIGNATION OF PROPERTY TO BE USED BY TENANT.

Every farm lease, whether cash or share, should indicate clearly what property is to be used by the tenant and what is to be reserved from use. Generally it is easier to specify the property reserved from use. All the property not so specified will by implication be subject to use by the tenant under the contract of lease. The particular items of restriction may vary from farm to farm, as, for instance, in the amount of use the tenant may make of standing timber. The reservations may include such items as use of fruit, wood, standing timber, minerals (in the case of a long lease), fish and game, gravel beds, sand pits, certain rooms in the house, portions of outbuildings, etc.

In the case of farms or estates where it is the practice to rent principally the crop land to tenants it may be desirable to designate what use the tenant may make of land and buildings other than the crop land. Frequently the tenant is given free use of a residence, a garden spot, pasturage for a limited number of stock, and, where available, the privilege of obtaining firewood and fruit.

FARMING SPECIFICATIONS.

It is customary to include in farm leases a clause stipulating that the tenant shall "well and faithfully till and farm the premises above described in a good and farmerlike (or husbandmanlike) manner." Such a clause requires only that the tenant shall not violate the conventional standards of farming prevailing in the neighborhood, which may be good or bad, as the case may be.

It is usually desirable, both in cash and share leases, that more detailed specifications with respect to the method of farming be included. In the case of cash leases these specifications will take the form principally of provisions for safeguarding the fertility of the land. In share contracts the landlord is vitally interested in the annual production of the land and has a right to include such provisions as may be necessary to insure efficient farming. When the landlord finds it possible to devote considerable attention to supervision, and it has been agreed that he shall exercise this supervision, detailed farming specifications need not be included in the lease contract. In any case such restrictions should not unduly fetter the

tenant so that he is handicapped in his efforts to operate the farm efficiently.

The list of farming specifications is sometimes made a distinct and separate part of the contract. In order to make its provisions clear it may be accompanied by a map of the farm, showing such things as the proposed field system, location of permanent pasture and woodland, perennial crops not to be plowed up, fields to which manure is to be applied each year, drainage ditches, fences, roads, and other essential considerations.

The details that may be specified are so numerous and vary so largely, according to the individual case, that it is impracticable to discuss them fully in this bulletin. For instance, in some localities farm practice may not give proper recognition to the fertility lost by the burning of straw stacks and corn stalks, and in such localities it may be well to designate that the straw shall be spread and the corn stalks rolled, disked, and plowed under. All leases should safeguard the fertility of the farm as far as possible by providing for the utilization by live stock on the farm of a reasonable proportion of the feedable crops and the return to the soil of the manure, straw, and other roughage. A landlord leasing land to a tenant who lives and keeps his live stock on another farm should, in particular, take precaution to secure the return of a part of the manure if the straw, corn stover, or other roughage is removed from the land rented. The lease should provide against trampling of fields by stock in the spring or in muddy weather, and prohibit overgrazing or the pasturing of unringed hogs or breachy cattle. It is especially important to provide that noxious weeds shall not be allowed to go to seed on the premises or on roads or lanes adjacent thereto.

In addition to these safeguards the lease may specify the field and rotation systems in detail. It may even be desirable to specify the method of plowing, as, for instance, where Mangum terraces must be maintained to prevent erosion. Sometimes it is desirable to specify such a thing as the method of thrashing, to prevent the spread of weed seeds, and to reduce waste of grain.

COMPENSATION FOR IMPROVEMENTS.

As pointed out above, assurance of compensation for unexhausted improvements is essential in a lease granted only for a short term of years if the tenant is to be expected to farm conservatively and in a way that will increase rather than decrease the fertility of the farm and the value of the improvements. Compensation for improvements has been required by law in England for many years. In the United States, however, it has not been extensively practiced, and consequently in this country we lack experience in determining values. England not only has statutes on the matter but she has

well-developed agencies by which practice in determining compensation is improved and standardized.

Improvements concerning which problems of compensation may arise may be classified as follows, this classification being based on points covered by the English agricultural holding acts:

(1) Buildings, silos, fences, and other structures.
(2) Laying down of permanent pasture.
(3) Irrigation systems.
(4) Making or improvement of roads or bridges.
(5) Making or improvement of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
(6) Making or removal of permanent fences.
(7) Planting orchards or fruit bushes, and protecting them.
(8) Reclaiming waste land or building embankments and sluices against floods.
(9) Drainage of land.
(10) Application to the land of lime, marl, ground rock phosphate, or other fertilizers which will result in a residual benefit to the land after the termination of the lease.
(11) Consumption on the farm by live stock of feedstuffs not produced on the farm.
(12) Consumption on the farm by live stock of feedstuffs produced on the farm.
(13) Laying down temporary pasture with clover, grass, alfalfa, and other seeds, sown not more than two years prior to the termination of the lease contract.
(14) Plowing and preparation of land for seeding or seeding of crops which will be harvested after the termination of the lease contract.

In this country in special cases compensation may be needed in connection with the leveling of land for irrigation purposes and the terracing of land for the purpose of minimizing danger from soil erosion. Compensation may also be of importance in connection with land-improvement work, such as removing stone, stumps, brush, and weeds. Under the English law the various improvements numbered from 1 to 8 inclusive are subject to compulsory compensation only when the landlord has given his consent to the making of the improvement. For drainage improvements (number 9) the tenant must give notice to the landlord not less than two nor more than three months before the work is to begin. During this period the landlord may make the improvement himself, charging the tenant a reasonable rent for its use after completion. The improvements numbered 10 to 13 inclusive may be made by the tenant and are subject to compulsory compensation without giving notice to the landlord.

Number 14 is not contained in the English classification because it is presumed that it is provided for in the lease. As a matter of fact, there are two ways of making such provision. If plowing or

seeding has been done by the preceding tenant, the new tenant may pay the reasonable cost for the work. At the termination of the lease the new tenant should be paid by the landlord or by the incoming tenant for similar work. Another method is for each tenant to leave as much plowed or seeded land as was taken over by him at the beginning of his tenancy. This method, however, is likely to be less satisfactory than the method first mentioned.

The problem of determining the amount of compensation to be allowed for improvements numbered from 1 to 9, inclusive, is not of unusual difficulty. The tenant should be allowed the reasonable cost of making the improvement less any depreciation on the improvement that occurs before the termination of the lease contract. Compensation for such improvement may be made at the time the improvement is completed, or may await the termination of the lease. Where the usefulness of an improvement is likely to end before the tenant leaves the farm the tenant should expect no compensation unless he leaves the farm before the usefulness of the improvement has ceased. In the case of durable improvements, on the other hand, usually the landlord should pay for the improvement when completed, and then add enough to the annual rent to cover the interest and depreciation. Where, as is often the case on share-rented farms, an improvement is of equal advantage to landlord and tenant the landlord should bear at least his proportionate share of the initial cost, compensating the tenant for his interest in any improvement remaining at the termination of their share relationship.

The compensation to be allowed for the residual value of manure and fertilizer applied to the farm land is a problem of considerable difficulty because of the lack of exact knowledge as to the actual quantity of fertility that is likely to remain in the soil under varying conditions. Frequently, the decision may be satisfactorily left to arbitration or to a disinterested third party. In the case of manure resulting from the feeding of crops which have been produced on the farm compensation should not be allowed when such a feeding policy is recognized as the usual practice of the community. Sometimes, however, it pays better to sell crops than to feed them. Where this is the case the tenant, in order to encourage him to feed rather than to sell, may be compensated either by a deduction from his rent or by compensation for the unexhausted value of the manure applied to the soil.

In the case of other fertilizers it has been suggested that the initial cost (excluding labor of application) shall be reduced for each year of use after application 25 per cent for ground limestone; 10 per cent for ground raw phosphates; and for soluble fertilizers such as steam bone meal, acid phoshates, and potash salts, 50 per cent the first

year and 75 per cent the second year.[2] While the above percentages may not be regarded as correct for all conditions, they may be helpful to landlords and tenants in arranging terms for compensation.

PROVISIONS FOR ENFORCEMENT.

It is desirable to include in a lease clauses providing methods for enforcing the contract. Enforcement clauses may deal specifically with (a) the performance of farm work, the making of repairs and other duties assumed by the tenant; (b) gross damage to the property rented through neglect or wilful injury; (c) the making of repairs, the furnishing of capital, the supplying live stock and equipment, and other obligations assumed by the landlord; (d) the payment of rent. The first of these considerations is especially important for a share-rent contract.

A clause to enforce compensation for failure to perform agreements on the part of the tenant or for damage to the property of the lessor may read as follows:

> It is hereby agreed that in case the party of the second part shall fail to perform his agreements or any of them herein contained, then the party of the first part shall have a right to hire any person or persons he may see fit to perform the agreements of the second party and all expense incident thereto shall be charged to the party of the second part and taken out of his share or interest in the property owned in common. It is further agreed that in case of gross damage to the property herein leased through neglect or willful injury by the party of the second part, the party of the first part shall have a right to terminate the agreement and lease; but the exercise of such right to terminate the agreement shall not impair the right of the party of the first part to bring action to collect damages for such injuries.

In many States a lien is created by statute which provides that the landlord shall have first claim on the tenant's crops grown on the leased land for the payment of rent and advances made by him. As stated previously, in most of the Southern States the cropper is held to be a laborer and not a tenant. Consequently, ownership in the crop until after division is vested in the landlord. The payment of rent is often secured by a chattel mortgage on the tenant's crops or on live stock, machinery, and implements. Such a mortgage is sometimes embodied in the lease contract, but, like any other mortgage, should be executed with all the formalities required for a mortgage and should be recorded in order to give notice to third persons of the rights of the landlord under the mortgage.

A clause providing for enforcing the landlord's undertakings and obligations to the tenant may read as follows:

> It is hereby agreed that in case of failure of the said landlord to keep and perform any of the agreements hereinbefore mentioned or implied the said

[2] From a bill to provide for compulsory compensation which was introduced in the legislature of the State of Illinois, but failed of passage.

tenant may perform the agreement, deducting the reasonable expense for such performance from such rent as may be or shall become due, and in case the agreement which the landlord fails to perform is of such character that it may not be performed by the tenant the contract shall, at the option of the said tenant or his assigns, be forfeited.

Provided, further, that nothing herein mentioned shall impair the right of the tenant to bring action for specific performance of the contract or for such damages as the said tenant may have suffered through failure of the landlord to perform the terms of the agreement.

It may be mutually agreed that any legal costs and expenses incurred by either party in enforcing the terms of the agreement shall be paid by the other party to the action. However, in several States this does not apply to attorneys' fees, and in any case the court will allow only such fees as are reasonable, irrespective of what may have been previously agreed upon.

ADJUSTMENT OF DIFFERENCES.

The above somewhat strict provisions for enforcing the terms of the contract should be regarded as safeguards to be applied only in last resort. Misunderstandings and litigation between landlord and tenant are likely to be very expensive to both parties. So far as possible, it is desirable to anticipate points of conflict and provide for them when the contract is made, for at that time both parties are anxious to agree. If both parties have the right spirit, any subsequent unforeseen difficulties can be adjusted by mutual agreement. However, there may be occasions when disputes arise which can not be so settled. Provision for adjusting such disputes may read as follows:

If the parties hereto are unable to agree upon any matter not definitely determined by this lease, each shall choose a referee, and they two shall choose a third, which three shall make a decision, and their decision shall be binding upon the parties hereto. None of said referees shall be related to either party or have any interest directly or indirectly, personally or otherwise, in the questions decided.

SOME SPECIAL PROBLEMS OF SHARE LEASES.

In an earlier part of this bulletin we have discussed some considerations common to all leases whether cash or share. In the share lease, however, the relation of the landlord to the farm is so much more intimate than in the case of the cash lease that a number of problems arise which are not encountered in cash leases.

RESTRICTIONS ON OUTSIDE WORK BY TENANT.

Since the rent of the landlord in the share lease vitally depends on the size of the crop the landlord needs some assurance that the tenant will not neglect the farm work in order to attend to outside interests. Therefore it is sometimes the practice to introduce into

the lease a clause which specifies that the tenant shall not farm other land and that he shall not engage in other kinds of work that will distract his attention from the farm, such as engaging in the business of thrashing or baling hay for others. Sometimes it is not desirable to make such a clause too rigid. It may be that the tenant can economically help his neighbors reap, thrash, bale, or put up silage, either in exchange for other labor or for cash payment. It may even be desirable for the tenant to farm other land if the original farm is not sufficiently large to engage all of his time. The restrictive clause should be drawn according to these special circumstances.

SAFEGUARDS WITH RESPECT TO JOINT EXPENDITURES AND SALES OF JOINTLY OWNED PROPERTY.

In stock share leases and other share contracts which approximate the character of economic partnership, each party is vitally interested in the wisdom and honesty with which expenditures and sales are made. It may be that the landlord has so great confidence in the tenant's honesty and discretion that he is willing to trust the tenant to transact all of this business. On the other hand, if the tenant is inexperienced in business matters, it may be to his interest, as well as to that of the landlord, that the latter make all purchases and sales for the joint account. Generally speaking, one party or the other should be designated for this purpose; for confusion is likely to arise where both are buying and selling without mutual consultation. The two parties to the contract should have a definite understanding with respect to this matter; otherwise, it may be a fertile source of disagreement.

Since there are numerous minor expenditures about which it is inconvenient for both parties to consult before acting, a clause reading as follows may be found satisfactory:

> Expenditures for the joint account or sale of jointly owned materials, live stock, and other farm property, if not exceeding in each case the sum of $25, shall be made by the lessee without consultation with the lessor. All expenditures for the joint account and all sales of jointly owned property in excess of $25 shall be made only on the mutual consent of both parties. It is further agreed that whenever an expenditure or sale is made on joint account the party making such expenditure or sale shall furnish the other party satisfactory vouchers or receipts.

Sometimes it is found desirable to require that all business for the joint account shall be transacted through a specified bank, e. g.:

> All joint business in the way of payments and receipts shall be transacted through the ——— Bank of ———.

When the joint interests of the two parties are greatly intermingled, as is likely to be the case in a share-lease contract which

partakes of the character of an economic partnership, it is essential that careful records be kept of all transactions, and it is desirable to require in the contract itself the keeping of such records. The following is a clause providing for this purpose:

> The lessee shall keep a strict financial record of the farm business, which includes a careful inventory of the land, equipment, and personal property, excepting household goods, and a complete record of the purchases and sales on account of the farm business, excepting household and other personal expenses of the lessee.

RESERVATION OF RIGHT OF SUPERVISION BY LANDLORD.

In the case of many share contracts the tenant is a young man, who will benefit by the advice and supervision of the landlord; and, in order to avoid misunderstanding, it may be desirable to insert in the contract a clause which will provide for the exercise of such supervision. Such a clause may read as follows:

> The party of the second part shall consult the party of the first part, or his representative, about all matters pertaining to said farm, including the fields to be planted, the plowing, cultivation, harvesting, and the handling, disposition, and sale of the crops and other products and stock of said farm, abiding by the decision of the party of the first part or his representative.

AMOUNT OF RENT AND TIME AND METHOD OF PAYMENT.

Great care should be used in defining carefully the method of dividing the products of the farm. It should be clearly indicated whether the division is to be made before certain expenses are deducted or after such deduction. This is especially important in the case of those share leases which are approximately economic partnerships. It should also be carefully stated what use of undivided products may be made by each party. Often, for instance, the tenant is allowed milk, eggs, and other products for family use out of the joint product of the farm. In some instances, also, the landlord receives certain things for family use out of the undivided product. However, if it is desired to make an accurate and careful division, it is necessary to take account of all these minor items, and in this case the tenant or the landlord should be charged for all jointly owned products used by him. In any case the lease should make clear the rights of the respective parties in regard to these matters.

It is also frequently customary to allow the tenant to feed work stock from undivided grain or hay and sometimes to feed a few hogs in like manner. Very commonly the tenant is allowed to feed poultry out of the undivided grain. If these privileges are to be allowed, however, the contract should provide definitely the maximum number of each kind of stock that the tenant may keep in this manner. A more accurate method is to require each party to feed all private

stock out of his share or to charge him for all feed used out of undivided property.

When the share lease applies only to crops, and not to live stock, it is frequently customary to charge the tenant cash rent for the use of pasture, since the landlord receives no benefit from this use. Sometimes a small amount of pasture may be allowed free as a special inducement to the tenant, or it may be balanced by some special advantage to the landlord in the division of the crops. However, when the lease applies both to stock and crops both parties benefit from the use of the pasture and no arrangement for pasture rent is necessary.

The time of division or payment of rent should be carefully indicated. On the great majority of farms the custom is to make the division or to pay the rent after the principal products of the farm have been harvested. In the case of dairy farms it is not infrequently customary for the landlord to receive his part of the milk check each month. However, when the lease is of the character of an economic partnership in which division is made only after expenses are deducted, it may be found difficult to divide the proceeds of the business so frequently.

It is also desirable to specify definitely where the landlord's share of the crop is to be delivered to him, as well as the method of making the division. Sometimes the division is made in the field, as in the case of corn, and some leases contain a provision that in order to facilitate division, corn is to be shocked in straight rows across the field with the same number of corn rows included in each shock row. Delivery is usually made in the crib or bin or at market. If it is desired that the tenant shall deliver the landlord's share at the shipping point this should be specified in the contract. This provision is frequently used as one of the balancing items in more or less complicated share leases. However, if the simplified type of lease hereafter suggested is employed, delivery of the landlord's share should be regarded as a part of the labor of the farm and should be included in the general estimate of the cost of labor, made preliminary to the determination of the shares of the respective parties.

Frequently the landlord trusts the tenant to make an honest division of the product. However, if the landlord is unwilling to do so he should specify that the division shall be made in the presence of himself or his representative.

FINAL DIVISION OF JOINTLY OWNED PROPERTY.

When live stock, crops, implements, feed, and other property are owned jointly, it is desirable to provide for an equitable method of dividing the jointly owned property in case of termination of the

lease. Several practicable methods of making such division are employed, some of which are stated in the following clause from an Oklahoma lease:

> At the termination of this lease the jointly owned property may be disposed of in one of three ways: Such property may be appraised by disinterested parties selected by the parties of the first and second part, either party paying the other party one-half of the appraised value and retaining the entire property. If a division of the property is desired the tenant shall divide the jointly owned property into two lots and the landowner shall take his choice of the two lots. In case neither of these plans is agreed upon, then the property shall be sold at public auction and the proceeds equally divided. Nothing herein shall be construed, however, to prevent the disposal of the jointly owned property by any other plan mutually agreeable to both parties.

The general provision for arbitration of disputes suggested above should be applied to the division of property at the termination of the lease.

At the beginning of a lease, when either party is buying a share in property to be held in common, such as live stock, implements, or feed, it may be found difficult to agree on the price at which the share shall be taken over. In case of such disagreement, disinterested parties should be employed to appraise the property and thus settle the dispute.

FUNDAMENTAL PRINCIPLES UNDERLYING ALL LEASE CONTRACTS.

A great many difficulties in the making of satisfactory leases may be eliminated by proper appreciation of a few fundamental principles. The farm lease is essentially a contract in which the landlord sells to the tenant the restricted right to use a farm for a certain period of time. It is of great importance to determine as accurately as possible the correct value of this right of use. If the price charged is too high the tenant is likely to find the business of farming unprofitable, and will be unable to continue the arrangement and live up to it. It is of the highest importance both to landlord and tenant that the lease be so drawn as to result in stability of tenure, for frequent moves are not profitable to either party.

Frequently, landlords assume that they should have a rent for the farm equivalent to a certain rate of return on the value of the farm; that is, that the farm should yield at least 4 or 5 per cent, or some other rate of interest, on its value. In some regions this assumption may be a reasonable starting point in determining proper terms, but there are a number of conditions which tend to make such a method an improper basis of determining rental value. In the first place, in regions where land value had been rising rapidly it was found that farm land has been greatly overvalued in relation to its income because the increase in value itself was regarded as a part of the reward

of land ownership. Men will pay much more for farm land that is rapidly increasing in selling value than they would pay if rent or farming profits were regarded as the only source of return. For instance, it has been found in Iowa that where this condition prevailed the average annual cash rental value of land was little more than 2 per cent of the average selling value. To charge a tenant 5 or 6 per cent on such value would be to handicap him seriously in the possibility of making a profit from his farming operations.

The overvaluation of land is sometimes due to the tendency of farmers to buy farm land for other than financial considerations. The farm is a home and one may pay a good deal for neighborhood advantages, for proximity to friends, relatives, church, and school, as well as for other residential advantages, including the farm house and other conveniences. Again, farmers have a certain pride of ownership which often will cause them to pay an unduly high price for a fine farm in the same spirit that one might pay an exorbitant price for a fine driving horse.

The landlord and tenant jointly make contributions to the business of production. Each should receive for his contributions what they are worth. If the total product of the farm, year after year, is not enough to pay the value of these contributions, the business must be regarded as unprofitable. As a matter of fact, however, the annual value of land may be considered a surplus above the other expenses of production. If some permanent change occurs to reduce the total average value of the product, in the long run the rental value of the land must fall because less will remain after paying the cost of securing the other factors of production. On the other hand, if a permanent change occurs to increase the average value of the product without increasing in the same proportion the other expenses, there will be a larger remainder that may be obtained by the landowner as rent.

The lease contract, especially in the case of the cash lease, tends to obscure this fact, for in the cash lease the tenant agrees to pay the landlord a fixed cash rent, and receives whatever may be left after paying this rent for his own expenses of production and profit. Landlords should bear in mind, however, that in the long run tenants must earn enough after paying rent to cover their expenses of production and a fair return for their own labor and risk. Moreover, a good tenant should receive more for his time than a poor tenant. In other words, if the return is such that an ordinary tenant can make fair wages, an enterprising and skillful tenant should receive a superior reward for his enterprise and skill. These principles, however, should not be interpreted to mean that a shiftless, indolent, and inefficient tenant should be guaranteed a living. (Such a man should not be in charge of a farm.)

PRINCIPLES UNDERLYING SHARE CONTRACTS.

In the share lease the landlord usually furnishes something more than merely the use of the land. In the simplest form of the share contract the landlord at least participates in the risk of the enterprise arising from variations in yields and in prices. In the more complex forms, such as the stock-share lease, the landlord may furnish half of the working capital or more, may bear half of the expenses, and may share in the management, so that he is actually a partner with the tenant in the enterprise.

This complexity in the relationship of landlord and tenant makes it much more difficult to determine the fair division of the product, especially when there is no system of accounting by which the relative value of the respective contributions of the two parties may be measured. The result has been that the actual systems of share leasing which have become customary in different parts of the country and in different types of farming are largely the product of a rough process of experiment. Different items are used to balance one another in a sort of rough and ready manner without the employment of any underlying and permanent principle of division. There is such a bewildering variety of privileges and obligations of uncertain money value that it may be practically impossible, even with a careful system of accounting, to determine the actual net shares of the respective parties. Such items as the twine bill, the thrashing bill, the furnishing of grass seed and horse feed, the fertilizer bills, hauling crops to market, and the use of pastures, are juggled back and forth in various combinations. The confusion is made greater by the yearly variation in the actual and relative value of the various factors of cost and by changes in crop acreages and farm practice.

It is important that this rough and ready method of adjustment, which was not seriously inaccurate in the pioneer days of our agriculture when the relative values involved were not nearly so large as at the present time and when fewer of our farmers were tenants, should give way to a simpler and more accurate method of bargaining under which it would be possible in advance for each party to balance with some degree of accuracy his prospective expenses and receipts. In formulating such a contract it is necessary to classify the contributions of the respective parties. We may recognize the following main groups:

(*a*) The use of real estate and expenses on account of real estate, including taxes, insurance on buildings, and repairs.
(*b*) Ordinary farm labor.
(*c*) Work stock.
(*d*) Special skilled labor hired on special occasions.
(*e*) Farm implements and operating equipment.
(*f*) Live stock other than work animals.
(*g*) Miscellaneous expenses.

The landlord, of course, provides the real estate, and generally pays the expenses on account of real estate. However, it is frequently customary for the tenant to furnish the unskilled labor necessary for making repairs on buildings and fences, and in the case of long leases he may even furnish the unskilled labor for making some improvements.

If the use of the real estate is a factor which the landlord is best in a position to contribute, the labor needed to work the farm can best be contributed by the tenant. Other factors of production may be owned by one or the other of the parties and a practicable plan of leasing worked out, but seldom is a rented farm to be found on which the landlord furnishes any large share of the labor used to operate it. On the ordinary family-sized farm the tenant who is a capable worker may need to hire practically no labor, especially if his children are old enough to help. If labor must be hired to assist in working the farm, the tenant should pay for it, as he is in the better position to control its cost and to get the most work for the money spent. His share of the returns should be so large that he will be amply rewarded for his willingness to do all he possibly can himself and for his ability to use labor effectively.

In regard to the work animals and equipment there is more diversity of practice than there is in the furnishing of land or labor. In some parts of the country, especially in the South, the very poor tenants may furnish only the labor, while the landlord furnishes the land, buildings, work animals, and equipment. On other southern farms, and usually in the North, the tenant farmer furnishes the labor to work the farm as well as the work animals and equipment. The one who furnishes the work animals and equipment usually contributes the feed, upkeep, and replacement costs associated with the use of these factors of production. However, on stock share farms the tenant, although contributing the work animals and equipment, generally has the right to feed these animals from the undivided feed and supplies, and not uncommonly the landlord owns a part or full interest in some of the equipment or in some of the horses.

The simplest kind of share contract would be one in which all expenses, including the value of the use of land, were shared in some definite proportion, as half and half, and all receipts were shared in the same proportion. This would be in the fullest sense an economic partnership. Since, however, it is customary and largely desirable that the landlord shall invariably furnish the use of real estate while the tenant shall furnish the farm labor and also usually the work stock and equipment, it is possible to make a simple and accurate adjustment as follows: First an estimate should be made of the fair value of the use of the land and of the value of ordinary farm labor, with additional estimates of the cost of horse

labor and the annual cost of the use of the equipment. The value of each of these items may be determined with a fair degree of accuracy in advance. The ratio of the two values should be determined, and all other expenses and receipts should be borne in the same proportion. Suppose, for instance, that it is found that the fair value of the use of the land for a year is $500, while the fair value of the farm labor, horse labor, and use of equipment is $1,000. The ratio of these quantities is 1 to 2. The landlord should then pay one-third of all other expenses and the tenant two-thirds of all other expenses. After these other expenses have been deducted from the total receipts the landlord should receive one-third of the remainder and the tenant two-thirds of the remainder. If the land and labor have been fairly valued, the effect of this arrangement will be to apportion the shares of the product in exact proportion to the value of the contributions of the respective parties and there will be no unknown items in the calculation.

It may be objected that this arrangement will not conform to the convenience of the two parties with respect to contributing to expenses. Thus the tenant may not have sufficient funds to bear the share of expenses allotted to him, or it may not be convenient for the landlord to furnish his designated share of expenses. It is clear, however, that the total expenses must be borne by one or both of the two parties in some proportion. Whichever party is lacking in the necessary funds to defray his share of the expense should borrow the necessary amount from the other party or from some other source of credit, paying interest on the loan until the end of the crop year, when the net receipts are divided and the loan may be repaid.

This method of simplifying the rental contract conforms in part to customary practice. In most parts of the country a customary share has developed which is supposed to represent roughly the proportionate value of the invariable contributions of the respective parties. For instance, in the Cotton Belt it is customary for the tenant when furnishing work stock to pay the landlord one-fourth of the cotton and one-third of the grain. In the newer wheat regions it is generally customary for the tenant to furnish work stock and implements and pay one-third of the grain. Where land is more valuable the tenant will pay one-half of the grain. These customary shares, however, do not take into account the variation in value between individual farms, and consequently other items of expense such as the twine bill, the thrashing bill, the fertilizer bill, the furnishing of the seed grain, and the amount of rent for special privileges payable in cash are employed as balances, resulting in an unduly complicated contract.

The method of adjusting the share contract suggested above has been proposed by a number of students of the tenant contract. How-

ever, it has frequently been assumed that the proportion should always be half and half—that is, that the landlord should furnish the land and the tenant the labor, sharing other expenses equally and sharing equally in the net receipts. There is no reason, however, why the proportion should always be in this ratio. The values of the respective contributions vary greatly from section to section and from farm to farm. Thus, in the case of very intensive crops, such as sugar-beets, cotton, tobacco, and various truck crops, the value of labor in proportion to the value of land is likely to be greater than in the case of general farm crops. This difference is commonly reflected in ordinary share contracts by giving a greater share to the tenant. For instance, in the South the tenant pays the landlord one-third of the grain but only one-fourth of the cotton. Moreover, some farms are more valuable than other farms. The good farms, however, are likely to attract the more efficient tenants, and therefore the normal ratio of the value of land to the value of labor in the community may not be so greatly disturbed by this element. In other words, if the annual value of ordinary land in the community is one-half the value of the labor of the ordinary tenant, it is quite possible that the value of a farm of superior fertility, location, and equipment may be balanced against the superior efficiency of the tenant who may be secured for that farm.

These differences between the relative values of land and labor required in the production of different crops give rise to one objection to the system of share renting suggested above, an objection which is common to all share-renting systems which provide a uniform rent share for all farm enterprises. The uniform share may overvalue the labor applied to one enterprise as compared to that required for other enterprises. If this is true, the farmer may be tempted to devote more labor to the overvalued enterprise at the expense of those undervalued. Thus, when the equitable rent shares of corn and cotton considered separately are respectively one-third and one-fourth, a uniform share rent of two-sevenths would tend to undervalue labor employed on cotton and correspondingly to overvalue that employed on corn.

However, when the landlord participates actively in the management of the farm he may prevent any disproportionate use of labor that might result from a uniform-share contract.

In estimating the value of the annual use of land for the purpose of determining a fair division in the farm contract no deduction should be made for the annual expenses on account of the farm real estate, including expenditures for repairs, taxes, and insurance, for these expenses are in reality covered by the estimated annual value of the land.

THE PERSONAL RELATIONSHIP.

While a carefully considered lease may do much toward promoting a harmonious relationship between landlord and tenant it will be futile in preventing trouble unless the two parties have the proper attitude toward one another. If either party is captious or quarrelsome, being inclined to dispute minor details, the arrangement is not likely to prove a happy one. If this spirit prevails, numerous specifications and safeguards in the contract, while affording some protection to the respective parties, may only serve to call attention to points that may be made subjects of dispute.

At the outset each party should consider well not only the terms of the bargain but also the general desirability of the bargain itself. The landlord should select his tenant with special regard to his personal qualities; of these honesty is of first importance, especially in the case of share renting. Good nature and tractability are of great importance. Experience and efficiency as a manager may not be so important from the landlord's standpoint in cash renting, and may be of less importance than such qualities as honesty, good nature, and energy, even in a share contract, provided the landlord is himself experienced and can devote considerable time to supervision. The landlord should also assure himself that the tenant can obtain the necessary equipment and capital to operate efficiently.

To obtain and hold a tenant having the desirable qualities the landlord can well afford to make numerous minor concessions in the contract. Indeed, a sharp bargain which proves a source of dissatisfaction and hard feeling on the part of a good tenant may prove a costly bargain for the landlord.

A landlord will usually find that the easiest way to get his tenant to do certain things is to make it profitable for the tenant to do them.

The tenant, in making a choice, needs to consider both the landlord and the farm. The importance of a good landlord is in direct proportion to the intimacy of the relationship imposed under the terms of the contract. In a cash lease the relationship may often be largely impersonal, whereas in a stock share lease the relationship is so close as to make good feeling and the spirit of mutual cooperation and concession essentials of success.

The proper choice of a farm involves considerations so numerous that they can not be fully elaborated in this bulletin. However, just as the landlord can afford to make some concessions in order to secure a good tenant, so the tenant should remember that the difference in productivity between a good and a poor farm may be so great as more than to compensate for a contract that may be illiberal in minor details.

In general, the tenant should look well to the character and condition of the land, the presence or absence of noxious weeds, the character and condition of the dwelling house, barns, and other outbuildings, the fences, the character of the roads, the water supply, the pasture facilities and supply of wood. The tenant may consult the outgoing tenant, the neighbors, his banker, the thrasherman, and other persons in a position to give accurate information.[3]

[3] See Farmers' Bulletin 1088, "Selecting a Farm."

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